

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

HYBIR, INC.,

Plaintiff,

v.

VEEAM SOFTWARE CORPORATION,

Defendant.

Case No: 1:20-cv-10329-MPK

**DEFENDANT VEEAM’S AMENDED MOTION TO DISMISS
PLAINTIFF HYBIR’S COMPLAINT UNDER 35 U.S.C. § 101**

Pursuant to Fed. R. Civ. P. 12(b)(6), Defendant Veeam Software Corporation (“Veeam”) moves under 35 U.S.C. §101 (“Section 101”) to dismiss the Complaint filed by Plaintiff Hybir, Inc. (“Plaintiff”) (D.I. 1). Dismissal of all counts is warranted because each of the three related patents asserted in this action, U.S. Patent Nos. 8,051,043 (“the ’043 patent”), 9,037,545 (“the ’545 patent”), and 9,679,146 (“the ’146 patent”) (collectively, “the Patents-in-Suit”), which all share the identical specification, are invalid under Section 101 for failing to claim patentable subject matter. As detailed in Veeam’s accompanying memorandum of law in support of this motion, the Patents-in-Suit are all drawn to the same abstract idea and lack any inventive concepts to satisfy the requirements of patent eligibility. Thus, Plaintiff’s Complaint fails to state a claim, and should be dismissed.

Dated: June 24, 2020

Respectfully submitted,

By: /s/ Byron L. Pickard

Byron L. Pickard (admitted *pro hac vice*)

Daniel S. Block (admitted *pro hac vice*)

Robert E. Niemeier (admitted *pro hac vice*)

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

1100 New York Avenue NW, Suite 600

Washington, DC 20005

(202) 371-2600

bpickard@sternekessler.com

dblock@sternekessler.com

rniemeier@sternekessler.com

By: /s/ Eric G. J. Kaviar

Eric G. J. Kaviar (BBO# 670833)

Shepard Davidson (BBO# 557082)

BURNS & LEVINSON LLP

125 High Street

Boston, MA 02110

Tel: 617-345-3000

Fax: 617-345-3299

ekaviar@burnslev.com

sdavidson@burnslev.com

Attorneys for Defendant

Veeam Software Corp.

CERTIFICATE OF SERVICE

I certify that this document is being filed through the Court's electronic filing system, which serves counsel for other parties who are registered participants as identified on the Notice of Electronic Filing (NEF). Any counsel for other parties who are not registered participants are being served by first class mail on the date of electronic filing.

By: /s/ Eric G. J. Kaviar
Eric G. J. Kaviar

LOCAL RULE 7.1 CERTIFICATE

I certify that the moving party conferred in good faith with opposing counsel regarding Defendant's intention to file this Motion, and the Parties were unable to reach an agreement as to the underlying dispute.

By: /s/ Eric G. J. Kaviar
Eric G. J. Kaviar